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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,174	09/10/2004	Christopher White	038665.55362US	8963

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CROWELL & MORING LLP  
INTELLECTUAL PROPERTY GROUP  
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WASHINGTON, DC 20044-4300

EXAMINER
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BERGIN, JAMES S

ART UNIT	PAPER NUMBER
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3641

MAIL DATE	DELIVERY MODE
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05/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/507,174

Applicant(s)

WHITE ET AL.

Examiner

James S. Bergin

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2006 and 02 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicants' election with traverse of invention group 1 in the reply filed on 3/2/2007 is acknowledged. The traversal is on the ground(s) that inventive groups 1 and 2 share the same special technical feature, namely, *"the provision of ordnance which has a cavity and within the cavity there is a bag which contains explosive material"*. This is not found persuasive because the above technical feature was already known in the prior art as evidenced by at least US patent 2,373,883 (FERREL, C. B.) and does not therefore constitute a proper linking special technical feature. Thus unity of invention does not exist between groups 1 and 2.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 5-8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 3/2/2007.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the bag being in an unstretched state, the bag having a volume in a range 5% to 10% less than that of the explosive cavity, as claimed in the applicants' claim 4, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-4 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: the casing wall

delineating the cavity - without the casing wall, there can be no cavity (see the applicants' Fig. 1).

6. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether the "ordnance" of claims 1-4 refers to the depicted embodiment of Fig. 1 (an ordnance shell 2) or to any one of the other disclosed potential embodiments (see the applicants' definition of the meaning of "ordnance" which appears on the bottom of page 5, *"References to ordnance in the above specification and claims shall be construed as non-limiting and in respect of the invention shall include without limitation shells, mortars, rockets, bombs, warheads, projectiles and any other weapons or containers which are required to be filled with a combined explosive mixture"*). If the applicants' contemplate that the ordnance of claims 1-4 reads on any other embodiment other than that depicted in Fig. 1, then these claimed embodiments must now be illustrated in the drawings.

In claims 3 and 4, it is unclear whether the applicant is attempting to claim an embodiment in which the ordnance cavity is not *"filled with explosive material"* with the bag containing the explosive occupying less than volume of the ordnance cavity. It is noted that claim 1 has previously claimed, *"a cavity filled with explosive material"*, the bag inherently in a stretched state. If the cavity of the ordnance is *"filled with explosive material"*, it is unclear how the bag (containing the explosive) can have a volume in a range of 5% - 10% less than that of the cavity of the ordnance and still meet the claim 1

limitation, "*a cavity filled with explosive material*", the bag inherently being in a stretched state.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3 rejected under 35 U.S.C. 102(b) as being anticipated by Ferrel (US 2,373,883).

Regarding claims 1 and 2, Ferrel's shell anticipates the applicants' claimed invention, see the Ferrel's Figs. 1 & 2, (at least page 1, col. 1, lines 40-52) depicting the rubber bag 5 in the shell cavity.

Regarding claim 3, Ferrel's rubber bag, as depicted in Figs. 1 and 2, inherently has a volume that is somewhat smaller than the shell cavity, when in an unstretched state (as illustrated in Figs 1 and 2) or when in a stretched state. If this were not true, the volume of Ferrel's rubber bag 5 could not fit inside the shell cavity.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the attached PTO FORM 892.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Bergin whose telephone number is 571-272-6872. The examiner can normally be reached on Monday - Wednesday and Friday, 8.30 - 5.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'J. S. Bergin', followed by a horizontal line.

James S. Bergin